

ENTERED

June 30, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. 7:19-CR-00522-3
	§	
ARTURO C. CUELLAR; aka AC	§	

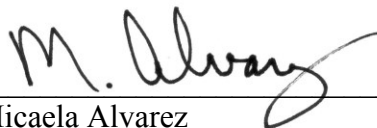
ORDER DENYING MOTION TO DISMISS

The Court now considers “Defendant’s Motion to Dismiss for Failure to State an Offense Under 18 U.S.C. § 666(a)(2)”¹ filed by Arturo C. Cuellar. Cuellar’s motion seeks dismissal of count nine of the superseding indictment² due to an argument that there is no connection between the charged conduct and federal funds.³ Cuellar’s argument relies solely on *United States v. Zwick*.⁴

First, Cuellar fails to recognize that the Fifth Circuit requires no such connection.⁵ This Court is bound by Fifth Circuit precedent, not Third Circuit. Additionally, Cuellar fails to mention that *Zwick* was abrogated by the Supreme Court in *Sabri v. United States*, where the Court resolved a circuit split by “dispos[ing] of this position that, to qualify as a valid exercise of Article I power, the statute must require proof of connection with federal money as an element of the offense.”⁶ Thus, the Court finds that the sole argument contained in the instant motion is based upon an incorrect statement of law and the motion is hereby **DENIED**. Further, the Court admonishes Counsel for Defendant for failing to conduct diligent research.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 30th day of June, 2021.



Micaela Alvarez
United States District Judge

¹ Dkt. No. 268.
² Dkt. No. 30, at 21.³ Dkt. No. 268, at 2.⁴ *United States v. Zwick*, 199 F.3d 678 (3d Cir. 1999).⁵ *United States v. Lipscomb*, 299 F.3d 303 (5th Cir. 2002).⁶ *Sabri v. U.S.*, 541 U.S. 600, 605 (2004).